



EXTRAORDINARY
OFFICIAL GAZETTE
THE BAHAMAS
PUBLISHED BY AUTHORITY

NASSAU

11th September, 2019

INVESTMENT FUNDS (AMENDMENT) ACT, 2019

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No. 33 of 2019

INVESTMENT FUNDS (AMENDMENT) ACT, 2019

AN ACT TO AMEND THE INVESTMENT FUNDS ACT, 2019

[Date of Assent - 6th September, 2019]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act may be cited as the Investment Funds (Amendment) Act, 2019.

2. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended —

- (a) by the insertion in the appropriate alphabetical order of the following new definition —
“**external valuer**” means a person that is independent of —
 - (a) the investment fund, the investment fund manager or the AIFM;
 - (b) any other person with close links to that fund, the investment fund manager or the AIFM;”;
- (b) in the definition of “investment fund administration” —
 - (i) by the insertion of the word “or” immediately after the semicolon in subparagraph (a);
 - (ii) by the deletion of the word “or” immediately after the semicolon in subparagraph (b); and
 - (iii) by the deletion of subparagraph (c); and
- (c) in the definition of “principal office”, by the insertion immediately after the word “fund” of the words “or an investment fund administrator”.

3. Amendment of section 24 of the principal Act.

Section 24 of the principal Act is amended in subsection (3), by the insertion immediately before the word "shall" of the word "manager".

4. Amendment of section 52 of the principal Act.

Section 52 of the principal Act is amended —

- (a) by the deletion and substitution of paragraph (a) as follows —
 - “(a) either —
 - (i) provide the principal office for an investment fund that it administers in or from The Bahamas; or
 - (ii) make arrangements for a principal office in The Bahamas;”;
- (b) in subparagraph (b), by the deletion of the words “the principal office” and the substitution of the words “administration services”.

5. Amendment of section 54 of the principal Act.

Section 54 of the principal Act is amended —

- (a) by the deletion of subsection (1);
- (b) by the renumbering of the remaining subsections;
- (c) in the newly renumbered subclause (2), delete the figures “(2)” and substitute the figures “(1)”;
- (d) in the newly renumbered subclause (3), delete —
 - (i) the figures “(2)” and substitute the figures “(1)”;
 - (ii) the figures “(3)” and substitute the figures “(2)”;
- (e) in the newly renumbered subclause (4), delete the figures “(3)” and substitute the figures “(2)”.

6. Amendment of section 60 of the principal Act.

Section 60 of the principal Act is amended by the deletion of the words “a principal office” in the chapeau and the substitution of the words “administrative services”.

7. Insertion of new sections 62A – 62C into the principal Act.

The principal Act is amended by the insertion immediately after section 62 of the following new sections —

“62A. **Valuation of standard funds.**

- (1) A licensed investment fund manager shall with respect to each standard fund that it manages ensure that —

- (a) policies and procedures appropriate to the nature, scale and complexity of the fund are adopted and implemented so that a proper and independent valuation of the assets of the standard fund can be performed in accordance with the constitutive documents and offering documents of the standard fund;
 - (b) that the net asset value of the equity interests of a standard fund is calculated and disclosed to the investors of such standard fund in accordance with the constitutive documents and offering documents of the standard fund; and
 - (c) the assets of the standard fund are valued and the net asset value of the equity interests is calculated at least once every year.
- (2) The valuation of a standard fund shall be performed either by the investment fund manager or by an external valuer.
 - (3) A valuer shall perform the valuation function impartially and with all due skill, care and diligence.

62B. Requirements for valuations.

- (1) An investment fund manager may conduct a valuation provided that —
 - (a) the valuation task is functionally independent from the portfolio management;
 - (b) the remuneration policy and other measures ensure that the conflicts of interest are mitigated; and
 - (c) measures are taken to avoid undue influence upon the employees.
- (2) An investment fund manager shall not appoint the custodian of a standard fund as the external valuer of that fund unless it is satisfied that the appointed custodian —
 - (a) has functionally and hierarchically separated the performance of its custodial functions from its tasks as an external valuer; and
 - (b) is able to manage the potential conflicts of interest and can monitor and disclose those conflicts to the investors of the standard fund.
- (3) An investment fund manager shall ensure that a valuer is suitably qualified as set out under section 62C.

- (4) Where the Commission is not satisfied that a valuer is suitably qualified under section 62C, the Commission may require another valuer to be appointed.
- (5) Where the valuation function is performed by the investment fund manager, the Commission may require the investment fund manager to have its valuation procedures or valuations, or both, verified by an external valuer or, where appropriate, an auditor.

62C Appointment of external valuer.

- (1) Where the investment fund manager appoints an external valuer to conduct a valuation, the investment fund manager shall ensure and demonstrate that —
 - (a) the external valuer is either subject to mandatory registration under the law or to rules of professional conduct; and
 - (b) the external valuer can provide sufficient professional guarantees to be able to effectively perform the relevant valuation functions in accordance with the Act.
- (2) An external valuer shall not delegate the valuation function to a third party.”.

8. Amendment of section 68 of the principal Act.

Section 68 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection —

“(2A) A person appointed under subsection (1) shall be —

- (a) a bank and trust company licensed under the Bank and Trust Companies Regulation Act (*Ch. 316*);
- (b) a person registered under the Securities Industry Act, 2011 (*No. 10 of 2011*); or
- (c) an institution approved by the Commission and subject to prudential regulation and ongoing supervision in a prescribed jurisdiction.”.

9. Amendment of section 83 of the principal Act.

Section 83 of the principal Act is amended in subsection (1)(a), by the deletion of the word “business” and the substitution of the words “investment fund”.

10. Amendment of section 84 of the principal Act.

Section 84 of the principal Act is amended —

- (a) by the deletion of the reference to subsection “(1)”; and
- (b) by the repeal of subsection (2).

11. Amendment of section 91 of the principal Act.

Section 91 of the principal Act is amended in subsection (2)(c), by the insertion immediately after the word “institution” of the words “approved by the Commission and”.

12. Amendment of section 154 of the principal Act.

Section 154 of the principal Act is amended by the deletion of the words “listed on a registered securities exchange”.